

STATE OF MICHIGAN
COURT OF APPEALS

MARK FOSTER and DEBORAH FOSTER,

Plaintiffs/Counterdefendants-
Appellants/Cross-Appellees,

v

LENAWEE COUNTY DRAIN COMMISSION,

Defendant/Counterplaintiff-
Appellee/Cross-Appellee,

and

LOCH ERIN PROPERTY OWNERS
ASSOCIATION,

Intervening Defendant-
Appellee/Cross-Appellant.

UNPUBLISHED

May 23, 2006

No. 260452

Lenawee Circuit Court

LC No. 02-000912-CH

Before: Murphy, P.J., and O’Connell and Murray, JJ.

PER CURIAM.

Plaintiffs, Mark Foster and Deborah Foster, appeal as of right from an order upholding the validity of an easement across their property to defendant, Lenawee County Drain Commission (“Drain Commission”), and reforming the scope of that easement. Plaintiffs claim that the trial court erred in concluding that the easement was valid. Intervening defendant, Loch Erin Property Owners Association (“LEPOA”), cross-appeals, contending that the trial court erred in denying its motions for partial summary disposition and involuntary dismissal. Both plaintiffs and LEPOA challenge the scope of the easement that the trial court found the Drain Commission has in the property. We affirm in part, reverse in part and remand.

I. Background

This case involves a dispute regarding the validity and scope of an easement in real property purportedly conveyed by plaintiffs’ predecessor in title to the Drain Commission. The north side of the property at issue has approximately 500 feet of frontage along Lake Loch Erin, an artificial lake, and contains a retention dike. The property is bounded on the south side by Reed Road. On January 26, 1985, Donald and Grace Edwards sold approximately three acres of

property they owned along the lake to Gerard and Linda Abram by land contract. The land contract contains a provision that “reserved” easement rights to the Lenawee County Drain Commissioner “for the purpose of access to the Loch Erin shore line to perform maintenance of dikes necessary to contain the lake . . . as set forth in an easement to be recorded.” Pursuant to this provision, the Edwards executed a quit claim deed to the Drain Commission on March 1, 1985, creating the easement at issue. The language in the quit claim deed grants “easement rights for the purpose of access to Loch Erin shore line to perform maintenance over the following described premises,” and describes the entire parcel of land that plaintiffs now own. On June 21, 1985, the quit claim deed granting the easement was recorded with the Lenawee County Register of Deeds.

Thereafter, the Edwards transferred their interest in the land contract to Irish Hills, Ltd., by a quit claim deed, and Irish Hills conveyed the property to the Abrams by warranty deed, “subject to easements and restrictions of record.” The Abrams then conveyed approximately two acres of their property to plaintiffs by warranty deed for the sum of \$40,000. The warranty deed transferred the property “subject to reservations, easements, and restrictions of record.” According to plaintiffs, they purchased the property for the purpose of constructing at least four homes on it. Plaintiffs contend that they discussed the existence of the easement with the Lenawee County Drain Commissioner, Stephen May, before closing on the property and received assurances that they would be able to develop the property and that four sewer stubs would be installed for that purpose. Pursuant to a permit that the Drain Commission issued, plaintiffs installed fill dirt between the dike and Reed Road in preparation for construction.

After they purchased the property, plaintiffs filed a complaint and an amended complaint for declaratory relief, requesting that the trial court hold the easement across their property invalid because the Edwards lacked the authority to grant the easement as they were merely vendors of a land contract and did not hold the real property interest, or alternatively, reform the easement to a size that was consistent with the general purpose of the easement and the intent of the original makers and that permitted plaintiffs to develop their property. Plaintiffs also requested monetary relief for the decrease in value or the taking of their property and costs associated with their reliance on May’s assurances that they could develop the property. The Drain Commission filed a cross-complaint, requesting that the trial court enter an order granting it a permanent easement for “sewer purposes” on the property. Subsequently, the trial court allowed LEPOA to intervene as a party defendant.

Before trial, the trial court denied a motion brought by LEPOA for partial summary disposition, holding that there was a question of fact regarding the authority that the Edwards held to grant an easement in the property. At trial, the trial court denied a motion brought by LEPOA for involuntary dismissal, concluding that the Drain Commission did not have a right to the entire parcel, only to a reasonable easement across the property to perform maintenance on the dike. The trial court also rejected plaintiffs’ claim that the easement was invalid, finding that, “the right to [the] easement was reserved from the deed.” Based on these rulings, the trial court determined that the only remaining issue was what constitutes a reasonable easement under the circumstances.

The trial court admitted the results of three engineering reports of the area in question. The Drain Commissioner, May, testified that, based on the data from these studies, it was his opinion that a reasonable easement was 37 feet, the width of the dike, plus 50 additional feet for

the materials and equipment necessary for maintenance. For access to this easement, May further recommended an easement of 25 to 30 feet from Reed Road.

In contrast, plaintiffs presented Christopher Crisenbery, a licensed engineer, who stated that a 45-foot easement was sufficient for monitoring and maintenance, along with an access easement from Reed Road of approximately 15 feet. Although he opined that maintenance could be accomplished in less than the area recommended by May, he acknowledged that May knew the Drain Commission's equipment and the additional area needed for its use and concluded that he would "tend to agree with the Drain Commissioner if that's what he required."

The trial court noted that, if the dike should fail, there was "potential for tremendous damage." Therefore, a reasonable easement must be adjacent to the dike and large enough to allow for adequate maintenance and repair. The trial court found that May was credible and knowledgeable and that Crisenbery did not dispute May's testimony. Thus, the trial court held that a reasonable easement was 37 feet, plus 50 feet from the water's edge. On January 10, 2005, the trial court entered a written order in accordance with this holding, plus the trial court added a 50-foot wide access easement from Reed Road to the easement along the shoreline and denied plaintiffs' demand for money damages. This appeal and cross-appeal followed.

II. Analysis

A. Validity of the Easement

On appeal, plaintiffs contend that the trial court erroneously held that the easement was valid. We disagree.

Plaintiffs' specific requests for declaratory relief and to quiet title or remove a cloud on a title are actions in equity. *Universal Am-Can Ltd v Attorney General*, 197 Mich App 34, 37; 494 NW2d 787 (1992); *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). We review equitable actions de novo, but review the factual findings of the trial court for clear error. MCR 2.613(C); *McFerren v B & B Inv Group*, 253 Mich App 517, 522; 655 NW2d 779 (2002). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Moreover, both the preliminary question of whether a contract is ambiguous and the subsequent interpretation of the contract are issues of law that we review de novo. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

Specifically, plaintiffs contend that the easement is invalid because the Edwards, as vendors of the land contract, lacked the authority to convey the easement to the Drain Commission without the joint approval of the Abrams, the vendees of the land contract. It is true that both the Edwards and the Abrams held some form of title to the property at issue at the time that the deed conveying the easement was executed. In equity, a buyer who performs under a land contract obtains an equitable title, while the vendor holds the legal title in trust for him. *Steward v Panek*, 251 Mich App 546, 555-556; 652 NW2d 232 (2002), citing *Charter Twp of Pittsfield v Saline*, 103 Mich App 99, 103; 302 NW2d 608 (1981). Moreover, when the land contract is signed, "the vendee acquires 'seisin' and a present interest in the property that may be sold, devised, or encumbered." *Graves v American Acceptance Mtg Corp (On Rehearing)*, 469

Mich 608, 616; 677 NW2d 829 (2004).¹ Thus, after payment of part of the purchase price, the Abrams were vested with equitable title in the property, and the Edwards held legal title in trust for them. Although the Abrams acquired ownership, they never held title to the portion of the property containing the easement at issue.

The land contract to which the Abrams agreed includes the following provision:

Seller and Purchaser [m]utually [a]gree . . . [e]asement rights reserved to the Lenawee County Drain Commissioner for the purpose of access to the Loch Erin shore line to perform maintenance of dikes necessary to contain the lake in accordance with court order setting the lake level dated August 8, 1977, as set forth in an easement to be recorded.

The trial court held that the easement was valid because the plain language of the contract “reserved” the right to the easement.

According to an old rule of conveyancing law, an easement may not be reserved for the benefit of a stranger to the deed or grant. *Mott v Stanlake*, 63 Mich App 440, 441-442; 234 NW2d 667 (1975), citing *Choals v Plummer*, 353 Mich 64, 71; 90 NW2d 851 (1958). However, a grantor may set forth an exception in favor of a third party. *Mott, supra* at 442. When a grantor does not attempt to create a reservation, but instead creates an exception for the benefit of a third party, the language of the conveying instrument is to be given its intended effect. *Id.*, citing *Martin v Cook*, 102 Mich 267; 60 NW 679 (1894).² Because the words “reservation” and “exception” are frequently confused and used indiscriminately, the grantor’s choice of language is not determinative of whether the provision is a reservation or exception. *Mott, supra* at 442. “The crucial factor is the intention of the grantor and grantee.” *Id.*, citing *Martin, supra*, and *Choals, supra*.

Despite the use of the term “reserved” in the clause at issue, there was no attempt to reserve an interest to the grantors. Instead, an exception was created in favor of a third party, the Drain Commissioner. Accordingly, the easement was excluded from the grant to the Abrams, and the Edwards subsequently conveyed the easement pursuant to the agreement. Although the trial court improperly termed the clause as a “reservation,” we hold that the court did not clearly err in finding that the easement was properly conveyed, and therefore, it was valid.

¹ “Seisin” is defined as “[p]ossession of a freehold estate in land; ownership.” Black’s Law Dictionary (8th ed).

² An exception withdraws a portion of the real property from the description conveyed. In other words, it excludes from the grant something that is not intended to be granted. In contrast, a reservation does not change the description of the property conveyed, but rather, reserves for the grantor a right or interest in the real property, such as an easement. A reservation establishes a new right or interest. See Black’s Law Dictionary (8th ed); see also *Mott, supra* at 443, and *Peck v McClelland*, 247 Mich 369, 370-371; 225 NW 514 (1929).

Plaintiffs also contend that the land contract contains ambiguous and conflicting provisions regarding the title guaranteed to them. Plaintiffs cite paragraph 1(a) of the contract, which provides:

Seller [a]grees [t]o sell and convey to Purchaser land [description], hereinafter referred to as “the land” together with all tenements, hereditaments, improvements, and appurtenances . . . now on the land; subject to any applicable building and use restrictions and to any easements affecting the land.

Plaintiffs also cite paragraph 1(c), which provides:

Seller [a]grees . . . [t]o execute and deliver to Purchaser . . . upon payment in full of all sums owing hereon, . . . a good and sufficient warranty deed conveying title to the land, subject to abovementioned restrictions and easements and to any then unpaid mortgage or mortgages, but free from all other encumbrances, except such as may be herein set forth or shall have accrued or attached since the date hereof through the acts or omissions of persons other than Seller or his assigns.

Plaintiffs argue that these paragraphs assured the Abrams that the Edwards would deliver “a deed free from any claims or easements except those that existed as of the day that the contract was executed.” Therefore, plaintiffs assert that these paragraphs conflict with paragraph 3(m), in which easement rights were excepted for the Drain Commissioner “as set forth in an easement to be recorded.”

The primary purpose of interpreting contracts is to determine and enforce the intent of the parties. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). To accomplish this, the reviewing court must read the parties’ contract as a whole and attempt to apply the plain language of the agreement. *Id.* The land contract contained an exception giving the Edwards the right to transfer an easement in the property to the Drain Commission. Therefore, the exception existed at the time that the contract was executed, and the Abrams purchased the property with knowledge of the easement. Contrary to plaintiffs’ assertion, paragraph 1(a) specifies that the property is “subject to . . . any easements affecting the land.” Furthermore, paragraph 1(c) states that the seller will convey a warranty deed on full payment “free from all other encumbrances, except such as may be herein set forth” These two paragraphs do not conflict with the subsequent paragraph excepting an easement for the benefit of the Drain Commissioner. Accordingly, we reject plaintiffs’ claim.

Plaintiffs further contend that the easement is invalid because it exceeds the scope of the exception in the land contract. Plaintiffs argue that the omitted language “of dikes necessary to contain the lake in accordance with court order setting the lake level dated August 8, 1977” is of “key importance” because it limits any easement to be granted to that of an easement of access to the dike to maintain the level of the lake and indicates the intent of the grantors.

“An easement is the right to use the land of another for a specified purpose.” *Schadewald v Brule*, 225 Mich App 26, 35; 570 NW2d 788 (1997). The scope of an easement is strictly confined to the purpose for which it was granted or reserved. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 41; 700 NW2d 364 (2005), citing *Delaney v Pond*, 350 Mich 685, 687; 86

NW2d 816 (1957). While the language of the deed granting the easement differs somewhat from the language of the exception, the purpose for the easement is clearly stated in both documents. The exception and the easement state that the easement is for the purpose of “access” to the shoreline of the lake “to perform maintenance.” It is undisputed that maintenance may be necessary because the property is bounded by a dike that keeps the lake water enclosed. The alleged limiting language of the easement has no bearing on the extent of the easement, as the purposes stated in both documents are comparable. Therefore, we conclude that the trial court did not err in ruling that the easement was valid.

B. Extrinsic Evidence

Plaintiffs claim that the trial court should have considered parol evidence in determining the scope and purpose of the easement. We agree.

A trial court’s decision to admit and consider extrinsic evidence is reviewed for an abuse of discretion. *Chmielewski v Xermac, Inc*, 457 Mich 593, 614; 580 NW2d 817 (1998). If the language of the easement is ambiguous, the trial court may consider extrinsic evidence to determine the scope of the easement. *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003). Furthermore, a trial court’s interpretation of an easement is a question of law that we review de novo. *Schroeder v Detroit*, 221 Mich App 364, 366; 561 NW2d 497 (1997).

“An easement may be created by express grant, by reservation or exception, or by covenant or agreement.” *Rossow v Brentwood Farms Dev, Inc*, 251 Mich App 652, 661; 651 NW2d 458 (2002), quoting *Michigan State Hwy Comm v Canvaser Bros Bldg Co*, 61 Mich App 176, 181; 232 NW2d 351 (1975). To create an express grant of an easement, there must be language in the conveying instrument showing a clear intent to create the easement. *Forge v Smith*, 458 Mich 198, 205; 580 NW2d 876 (1998); see also 25 Am Jur 2d, Easements and Licenses, § 18, p 586.

Here, the deed conveying the interest grants to the Drain Commissioner, “easement rights for the purpose of access to Loch Erin shore line to perform maintenance over the following described premises,” and describes the entire parcel of land at issue. The language clearly shows that the parties intended to create an express easement to the Drain Commissioner for the purpose of allowing access to the lakeshore for maintenance. While the purpose of the easement is clear from the plain language of the deed, the scope or dimensions of the easement are unclear. The deed conveying the easement describes the entire property. Although this description is all encompassing, the purpose limits the easement to “access” to the “shore line to perform maintenance.” The scope of an easement is strictly confined to the purpose for which it was granted or reserved. *Blackhawk Dev Corp, supra* at 41, citing *Delaney, supra* at 687. Therefore, the scope of the easement at issue is unclear under the plain language of the conveying instrument.

Fox v Pierce, 50 Mich 500, 504; 15 NW 880 (1883), contained a statement that was later adopted as the general rule in *Stolte v Krentel*, 271 Mich 98, 102; 260 NW 127 (1935), which enunciated that it was the “legal yardstick” whereby the issue of an indefinite conveyance is to be governed:

“Now a right of way which is too indefinite for a determinate description is too indefinite to be established and protected by the court of chancery. Assuming that the right which is actually in controversy, or rather the right which complainants contemplate, to be capable of such a description, the rule then applies that the complainant must so state his case that if admitted by answer, or proved at the hearing, the court can decree upon it. Has that been done? Are the means given to enable the court to declare in its paper decree exactly what right of passage exists, and of what shape and dimensions the place is, and precisely where it is located with reference to lot lines and permanent erections?”

The rule of *Fox, supra*, has little application where, as here, an easement is created by express grant, not by prescription. Particularly where, as here, the purpose of the easement is clear and the scope may be located by the clear intention of the original parties, “equity will not be so blind as to fail to recognize the evident and necessary designation of the way.” *Greve v Caron*, 233 Mich 261, 264-265; 206 NW 334 (1925). Moreover, if the description in the written instrument is insufficient, a trial court can properly examine extrinsic evidence to define the scope of the easement and give effect to the parties’ intent. *Little, supra* at 700; *Johnston v Michigan Consolidated Gas Co*, 337 Mich 572, 577-578; 60 NW2d 464 (1953). “Such factors as the circumstances of possession and ownership, the relation of the parties and their relationship to the property, as well as the negotiations involved, may be examined to determine the description of the interest at issue.” *Kahn-Reiss, Inc v Detroit & Northern Savings & Loan Ass’n*, 59 Mich App 1, 8-9; 228 NW2d 816 (1975), citing *Domas v Rossi*, 52 Mich App 311, 313-314; 217 NW2d 75 (1974).

Although the trial court allowed some extrinsic evidence, namely engineering reports and opinions, it denied both plaintiffs’ and LEPOA’s requests for evidence regarding the intent of the parties to the conveyances and made its determination of what constituted a reasonable easement without reference to such evidence. A court acting in equity must review the entire situation and grant or withhold relief as good conscience requires. *Morren, supra* at 410, citing *Hunter v Slater*, 331 Mich 1, 7; 49 NW2d 33 (1951). Besides uncertainties in the deed conveying the easement, the language of the land contract contains ambiguities regarding whether the parties’ intended an easement in gross or a partial easement. The contract fails to specify the dimensions of the exception for the easement, prohibits any splitting of the property for at least ten years and contains the purchase price of \$18,500, implying that the property held value. The proposed testimony of Donald Edwards would have comported with his statements in an affidavit in which he contended that he intended for the easement to cover the entire property and the property never to be developed. According to plaintiffs, Linda Abram would have purportedly testified that she never would have agreed to allowing the Drain Commissioner an easement that covered the entire property. This proposed testimony from Abram and Edwards is relevant to the determination of the scope of the easement, and in particular whether the evidence established that the intended easement was to cover the entire parcel. Although the trial court made this determination, it did so without hearing the testimony from these witnesses with diverse accounts of the intent of the easement. Hence, the trial court abused its discretion in failing to allow extrinsic evidence regarding the parties’ intent as to the scope of the easement – particularly whether it extended over the entire parcel - given to the Drain Commission. Accordingly, we hold that further proceedings are necessary to determine this precise issue.

On remand, it is quite possible that the trial court may again determine that the parties did not intend for the easement to cover the entire property, but instead only an undefined portion of it. Given that very real possibility, we will review the remaining issues to avoid further litigation or appeals after the decision on remand.

In light of the evidence presented at trial, we conclude that the trial court's decision that 87 feet constitutes a reasonable easement was not erroneous. A trial court's grant or withdrawal of injunctive relief is within its sound discretion and must be based on the facts of the case. *Roy v Chevrolet Motor Car Co*, 262 Mich 663, 668; 247 NW 774 (1933). Here, after determining that the affidavit established that the easement did not cover the entire parcel, the trial court allowed testimony regarding what a reasonable easement should be under the circumstances. The trial court admitted the results of three engineering reports of the area in question and took testimony from May, the Drain Commissioner, and Crisenbery, a licensed engineer.

May's testimony supports the trial court's decision, and therefore the findings of fact are not clearly erroneous. May calculated the width of the dike by measuring the slopes on either side and the top of the berm. May further testified that a 50-foot area beyond the dike was necessary based on allowance for maintenance and repair equipment, particularly in an emergency situation. There was no evidence that the engineering studies of the property conflicted with May's testimony. Moreover, Crisenbery acknowledged that May was in a better position to make the determination regarding additional footage and conceded that he would not disagree with May's assessment. The trial court found May both credible and knowledgeable. We give deference to the lower court's superior ability to evaluate the credibility of the witnesses who appeared before it. *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 531; 695 NW2d 508 (2004). Because it was supported by the evidence, the trial court's reasonableness determination was not erroneous.³

³ There is no merit to plaintiffs' related argument that the trial court's ruling setting the easement at 87 feet was, in effect, an unconstitutional taking. Both the United States Constitution and the Michigan Constitution contemplate that the government may exercise its power of eminent domain to acquire private property for a public use. US Const, Am V; Const 1963, art 10, § 2. Thus, a taking occurs when private property is taken for a public use without just compensation. In this case, there was no issue of private property being taken for a public use. Rather, there was an issue requiring a determination of the extent of an easement already in existence. Similarly, plaintiffs' argument that they relied on May's purported assurances when they purchased the property and incurred expenses toward development lacks merit. "Injunctive relief will not be available to an owner if he purchases land with full knowledge of the land's condition and of easements granted to others." *Lenawee Co Bd of Comm'rs v Abraham*, 93 Mich App 774, 781; 287 NW2d 371 (1979). This applies to damages as well. *Id.* Thus, plaintiffs are precluded from recovering damages for a condition to which the property was subject at the time of purchase. The deed conveyed to plaintiffs clearly stated that the conveyance was "subject to reservations, easements, and restrictions of record," and the easement at issue was recorded at the time of plaintiffs' purchase. Plaintiffs also admitted that they knew of an easement on the property before they purchased it. While plaintiffs may have been unaware of the scope of the easement, they should have further investigated or objected to the limitations at the time of (continued...)

Furthermore, the language of the reformed easement was not contrary to the stated purpose of the easement. The easement states that it is for the purpose of “access” to the shoreline of the lake “to perform maintenance.” It is undisputed that the existence of a dike that enclosed the lake waters created the need for maintenance and repair. Accordingly, it was not unreasonable for the trial court to conclude that the order should contain language for the protection of the dike as well as for the maintenance of the lake’s level. Nor was it unreasonable to add a provision to allow access from Reed Road to the easement located along the shoreline.

C. Motion to Intervene

Plaintiffs assert that the trial court erred in permitting LEPOA to intervene because its motion was untimely filed, it lacked an interest relating to the property or transaction and any purported interest was sufficiently protected by the Drain Commission. We disagree.

We review a trial court’s decision on a motion to intervene for an abuse of discretion. *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 761; 630 NW2d 646 (2001). “‘An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made,’ *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (199[9]), or ‘the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias[,]’ *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001).” *Fritz v St Joseph Co Drain Comm’r*, 255 Mich App 154, 157; 661 NW2d 605 (2003).

Pursuant to MCR 2.209(A)(3), on timely application, a person has the right to intervene in an action:

when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

This court rule “should be liberally construed to allow intervention when the applicant’s interest otherwise may be inadequately represented.” *Precision Pipe & Supply, Inc v Meram Constr, Inc*, 195 Mich App 153, 156; 489 NW2d 166 (1992).

Regarding the timeliness of a motion, a party asserting a right to intervene “must be diligent, and any unreasonable delay after knowledge of the action will justify a denial of intervention where no satisfactory excuse is shown for the delay.” *Prudential Ins Co of America v Oak Park School Dist*, 142 Mich App 430, 434; 370 NW2d 20 (1985). Plaintiffs initiated this action on August 26, 2002, and LEPOA filed its motion to intervene nearly a year later. At the hearing on the motion to intervene, LEPOA admitted that it knew of this litigation “for some

(...continued)

purchase. *Id.* Therefore, we conclude that the trial court properly dismissed plaintiffs’ claims for money damages.

time,” but explained that only recently it realized it had a “basis to intervene.” LEPOA added that, when May was deposed “somewhat recently ago” he indicated that the Drain Commission would not pursue all of its rights, including its right to appeal an adverse decision. The filing of LEPOA’s motion was directly related to its discovery that the Drain Commission may not be protecting its interests to the fullest in this action. Although the length of time might have been unreasonable, we conclude that the reason for the delay was genuine.

Regarding the existence of an interest relating to the subject of the action, LEPOA contended that it, along with the “hundreds of other property owners” it represents, owns property along Lake Loch Erin. LEPOA explained that the easement protects an earthen dike that creates the artificial lake and that if anything were to happen to the dike, Loch Erin would flood, affecting the interests of the those with property along the lake. We conclude that, a homeowners association, whose property may be profoundly affected by any damage to the dike that is the reason for the easement at issue, has the right to intervene.

Regarding the adequacy of the representation of its interests, LEPOA asserted that May indicated at his deposition that the Drain Commission may not pursue all its legal rights, including its right to appeal the trial court’s decision. “[I]ntervention is properly allowed where the intervenor’s interests ‘*may be*’ inadequately represented by one of the existing parties.” *Vestevich, supra* at 761, quoting *D’Agostini v Roseville*, 396 Mich 185, 188-189; 240 NW2d 252 (1976) (emphasis in the original). Thus, the only requirement is a demonstration of “concern of inadequate representation of interests[.] . . . inadequacy of representation need not be definitely established.” *Vestevich, supra* at 762. Where such a concern exists, “the rules of intervention should be construed liberally in favor of intervention.” *Id.* The record sufficiently shows that LEPOA had a reasonable concern that the Drain Commission may not adequately represent its interests in this action. Therefore, we hold that the trial court did not abuse its discretion in permitting LEPOA to intervene pursuant to MCR 2.209(A)(3).

D. Motions for Partial Summary Disposition and Involuntary Dismissal

On cross-appeal, LEPOA contends that the trial court erred in denying its motion for partial summary disposition because the agreement clearly provided for an easement over the entire property and plaintiffs were aware of the easement and its scope. We disagree.

We review de novo a trial court’s decision on a motion for summary disposition in a declaratory judgment action. *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 416; 668 NW2d 199 (2003). A motion under MCR 2.116(C)(10) tests the factual support of a claim and is proper only if there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Id.* at 417. “In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists.” *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001).

As previously determined, the language of the deed conveying the interest is unclear regarding the scope of the easement. Although the legal description for the entire property is stated in the deed, an easement encompassing the entire property is contrary to the express purpose of the deed, which is for access to the shoreline of the lake to perform maintenance.

Because the scope of an easement is strictly confined to the purpose for which it was granted or reserved, there remained an issue of material fact regarding the grantors' intent for the scope of the easement. See *Blackhawk Dev Corp, supra* at 41, citing *Delaney, supra* at 687. Furthermore, given this ambiguity, plaintiffs' knowledge of the existence of the easement cannot necessarily be equated with an awareness of the scope of that easement. The trial court denied summary disposition after concluding that there remained a disputed issue of whether the Edwards had authority to convey the easement. This Court will uphold a trial court's proper decision even if made for erroneous reasons. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001). Because the deed conveying the interest did not clearly grant an easement over the entire property, we conclude that LEPOA was not entitled to summary disposition.

Similarly, we conclude that the trial court did not err in denying LEPOA's motion for involuntary dismissal. LEPOA argued below that the plain language of the conveying instrument provided for an easement over the entire property and that there were no factual disputes based on the opening statement of plaintiffs' counsel in which he purportedly admitted that the easement covered the entire piece of property. The trial court rejected LEPOA's motion for involuntary dismissal, concluding that the Drain Commission did not have a right to the entire parcel, only to a reasonable easement across the property to perform maintenance on the dike. Again, the language of the deed conveying the interest is unclear regarding the scope of the easement. Although plaintiffs' counsel asserted that the deed "covers the whole parcel of land," he further asserted that the easement was invalid and "whatever the access line to the lake was going to be, is not defined at all in the easement." This was not an admission that the easement encompassed the entire piece of property. Rather, it was a statement supporting plaintiffs' argument that the deed was ambiguous because it failed to specify the portion of the land over which the easement extended.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray